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monday, january 29,2007 @ 1:30pm

apple pays \$700,000 for bloggers' legal fees

Bloggers and online journalists have completed their final victory lap in a protracted fight against Apple. Earlier this month, a Santa Clara County Court ordered Apple to pay the legal fees associated with the defense of subpoenas issued to online journalists (and other related entities) in response to online reports about a confidential audio/video product -- code-named "Asteroid" -- under development at the Cupertino-based company. The "Asteroid" product was never released, but Apple claimed the news reports violated California state trade secret law and that the journalists were not entitled to First Amendment protections. However, following an appeals decision last year that strongly sided with the journalists, the Court ordered Apple to pay all legal costs associated with the defense, including a 2.2 times multiplier of the actual fees. [updated]

"The court's ruling is a victory for journalists of all mediums and a tremendous blow to those firms that believe their stature affords them the right to silence the media," said Kasper Jade, the publisher of *AppleInsider.com*, one of the sites that broke the original "Asteroid" report (the other was *PowerPage.org*). "Hopefully, Apple will think twice the next time it considers a campaign to bully the little guy into submission."

In total, Apple was ordered to pay nearly \$700,000 -- a small amount for a company that reported nearly \$1 billion in profit in the December quarter, but a large moral victory for bloggers, journalists and the Electronic Frontier Foundation (EFF) which helped defend against Apple's subpoenas.

"We are very pleased, as this will go a long way towards keeping EFF on the forefront of impact litigation defending the rights of online journalists and others," EFF Staff Attorney Kurt Opsahl wrote in an email. "Bloggers break the news, just like journalists do. They must be able to promise confidentiality in order to maintain the free flow of information. Without legal protection, informants will refuse to talk to reporters, diminishing the power of the open press that is the cornerstone of a free society."

Apple last week declined the opportunity to appeal the award ruling and paid in full. In addition, Apple dismissed the underlying case, but did so "without prejudice" (i.e., allowing them the to retain the right to re-file it at a later date).

In May of last year, a California state appeals court overturned a lower court decision from a few months prior, ruling in favor of the EFF's appeal on behalf of three bloggers: the Court upheld the rights of online journalists to protect their confidential sources and putting them on par with traditional print journalists. In its ruling, the appeals court said that bloggers and webmasters are no different in their protections than a reporter and editor for print publications.

"We can think of no workable test or principle that would distinguish 'legitimate' from 'illegitimate' news," wrote a three judge panel. "Any attempt by courts to draw such a distinction would imperil a fundamental purpose of the First Amendment, which is to identify the best, most important, and most valuable ideas not by any sociological or economic

formula, rule of law, or process of government, but through the rough and tumble competition of the memetic marketplace," the judges added.

The EFF, a legal organization dedicated to bringing traditional rights to the digital and internet worlds, received \$425,000, while the remaining monies went to co-counsel Richard Wiebe and Tom Moore who also helped prepare and defend the case.

Behind the multiplier

The EFF asked the court for a multiplier (a.k.a, "loadstar") of the actual legal fees to compensate for the double contingent risk presented, i.e., both the risk of not prevailing in the defense of the subpoenas and the risk of succeeding, but without the circumstances necessary to obtain legal fees. At the low-end of traditional multipliers, which can range from 2-4 under California law, the EFF also said that California laws provides for a multiplier based on the novelty and complexity of the legal issues involved.

"We litigated this case in the public interest and successfully obtained substantial public benefits by vindicating constitutional rights protecting all journalists, and the public that benefits from the work of journalists, and vindicating federal statutory rights that protect all the millions of users of email communications," Opsahl wrote.

"Also supporting a multiplier was the fact that the issues litigated were novel and complex, our work was of high quality, and the result achieved was extraordinary."

Separately, Apple has sued another Mac enthusiast site Think Secret, alleging that postings on the site contain Apple trade secrets.

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